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STATE OF CONNECTICUT

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GLOBAL SIGNAL ACQUISITIONS II  
APPLICATION FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS FACILITY  
LOCATED AT 1919 BOSTON POST ROAD,  
GUILFORD, CONNECTICUT

MAY 1, 2008

DOCKET NO. 349

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CONNECTICUT  
SITING COUNCIL

**BRIEF OF PARTIES AND INTERVENORS REGARDING APPLICATION FOR  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

**I. INTRODUCTION**

The present application seeks to relocate an existing and functioning wireless communications facility, a cell tower, for the sole purpose of enhancing the prospects of a commercial development on the site. The application makes no pretense that there is any public need for the relocation. The sole need cited in the application is for the maximum possible development of the private property on which the existing tower is located. No such need is recognized in the statutes as a justification for siting such a facility.

**II. PROCEDURAL BACKGROUND**

The present application was filed on October 19, 2007 and is in response to the denial by the Connecticut Siting Council (the "Council"), Petition 792, for declaratory ruling that no certificate of environmental compatibility and public need was required for the subject relocation. At a public meeting on December 12, 2006 the Council ruled that the

applicant would be requested to resubmit the filing as a docket application. This Docket #349 is in response to that ruling.

As part of its decision on Petition 792, the Council granted a grouped party status to Anthony Poccia, William and Myung Arabolis, Margaret Rose, Richard & Sandra Wilson and also granted grouped intervenor status to Heather Fernandes, Diane and Alan Sholomskas, Brian Denning, Daniel Capozziello and Joel and Donna Zemke<sup>1</sup> and ordered that status would be transferred to the new docket application when it was submitted.

This application, Docket #349, as originally submitted called for moving the existing 150' tower from its present location a distance of approximately 750' in a southeasterly direction. This location (the "original proposed relocation") would have the effect of moving the tower from its existing location which immediately adjacent to a commercial section of the Boston Post Road in the Town of Guilford and across the street from the Town of Guilford landfill and transfer station. The existing location only has three residences within 1,000 feet of the facility.<sup>2</sup> The original proposed relocation would place the tower within 1,000 feet of 31<sup>3</sup> residences including those of some of the parties and intervenors and directly in the visual line from their homes.

An initial public hearing was conducted on the application on January 15, 2008 at the

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<sup>1</sup> Party status had also been given to Mr. Gus Karadas and Nancy and James Kendrick. They, however, withdrew as parties by letter from counsel on November 28, 2007.

<sup>2</sup>See Staff Report, Petition #613, Applicant Request for Admin. Notice, 1/9/08

<sup>3</sup>See Interrogatory responses to Connecticut Siting Council from applicant Global Signal Acquisitions II, December 21, 2007, response #5.

Town of Guilford Fire Department at 390 Church Street. In response to comments of the Siting Council and concerns of the public, the applicant filed its supplemental submission dated March 26, 2008 by which it proposed an alternate relocation site moving the telecommunications tower a distance of approximately 150' south and west of the existing location. A continued hearing was held by the Council on April 1, 2008, including consideration of the supplemental submission and alternate tower location.

### III. FACTUAL BACKGROUND

The existing tower facility is located at 1919 Boston Post Road and was approved in June 1997 by the Guilford Planning & Zoning Commission as a special permit to Sprint Spectrum LP for construction of a 130' monopole. That pole was extended in February 2003 by 20' pursuant to a Petition for Declaratory Ruling, Petition #613. The Council's staff report written to accompany Petition #613, found that "Surrounding uses include commercial/industrial use to the west, three grassy areas to the east, the town landfill to the south. There are three residences within 1,000' of the facility, the nearest of which is approximately 438' away."

According to the current application, a developer, Developer's Diversified Realty ("DDR"), proposes to develop the site upon which the existing facility is located and the surrounding property<sup>4</sup>. The application states "The existing facility needs to be relocated because DDR is in the process of obtaining necessary approvals to construct a lifestyle retail development on the property and the current location of the existing facility is within

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<sup>4</sup> The surrounding property is the "three grassy areas to the east" mentioned in the Council Staff Report of April 9, 2003 accompanying Petition 613, cited above.

the footprint of a proposed building” (Application Page 3).

At Page 6 of the Application, in the purported Statement of Need and Benefits, the Applicant states “ The existing facility currently fills a gap in coverage the coverage (sic) for all of these wireless carriers’ networks in the Guilford area, specifically along Interstate I-895 (sic) and Boston Post Road. The proposed relocated facility **will continue to fill the existing gaps in coverage...**” ( Emphasis added) The application does not suggest any existing problems with coverage, nor any enhancement by relocation of the facility as proposed in the application or in the supplemental submission of March 26, 2008.

The Application states at Page 8 that “The carriers that are currently located on the existing facility and will be co-located on the relocated facility, have deployed and will continue to deploy network technologies to implicate the FCC’s E911 mandates.” Neither the Application nor the supplemental submission indicate any enhancement in emergency communication of services. The application indicates that the carriers will be the same on the relocated tower and will in fact be reduced by one due to the merger of Cingular and AT&T Wireless (Application Page 10).

The Application, at Page 9, states plainly that “The purpose of this Application, then, is simply to relocate the existing facility, and **will not involve making any changes in the design or co-locations.**” (Emphasis added) There are no statements in the supplemental submission regarding the design of the facility nor with respect to any changes in the design or co-location on the facility once relocated.

#### IV. ARGUMENT

The Connecticut Public Utility Environmental Standards Act, places in the hands of the Connecticut Siting Council, the responsibility for issuing certificates of environmental compatibility and public need with respect to any telecommunications facility including the subject tower. Connecticut General Statutes §16-50k; 16-50x. The subject tower constitutes a "facility within the meaning of the act." CGS §16-50i(a)(6).

The authority of the Siting Council is based on the legislative findings and purpose enunciated in CGS §50g, which provides in relevant part as follows:

The legislature finds that . . . telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such . . . towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state. The purposes of this chapter are: To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; . . .

The legislative purpose says nothing about maximizing the development potential of private property.

CGS §16-50p outlines the jurisdictional basis for the Council to grant or deny a Certificate of Environmental Compatibility and Public Need. The section provides at Subsection (a)(3) that:

**"The Council shall not grant a Certificate, either as proposed or as modified by the Council, unless it shall find and determine (A)... a public need for the facility and the basis of the need ; (B) the nature of the**

probable environmental impacts of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with, the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water, purity and fish, aquaculture and wildlife; ( C) why the adverse effects or conflicts referred to in Subparagraph (B) of this subsection are not sufficient reason to deny the application;...” (Emphasis added)

As this is a full certification application (as opposed to the previous declaratory petitions #613 and #792), the full statutory Standard of Review must be applied. There is no balancing test between environmental impacts and public need. They constitute two distinct elements, public need and environmental impacts, which each must be met for the Council to grant any application in a certification process. The presumption is that the Council shall not grant a Certificate unless the applicant has met their burden of proof as to these two elements.

This section goes on at (b) to provide the Council should examine the likelihood and feasibility of acquiring sharing of existing facilities or the sharing of new facilities being proposed. This section further provides (b)(2) that the Council may impose reasonable conditions necessary to promote sharing of the facility and thereby avoiding unnecessary proliferation of such facilities in the state.

Subsection (g) of this section also admonishes that “in making its decision on whether or not to issue a Certificate, the Council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein for the purpose or constructing the facility which is the subject of its application.”

**A. There Is No Public Need to Relocate the Tower:**

**1. Location:**

Neither the original application nor the supplemental submission speak of the existence of any public need whatever to move the subject tower. As the application and the testimony both reflected, the existing tower, the original proposed relocation and the alternate proposed relocation, each will serve the "... need for adequate and reliable public utility services..." equally well and are "... and technically sufficient to assure the welfare and protection of the people of the state..." (CGS §50g, supra) There will be no enhancement in service, there will be no new co-locations (in fact there will be a reduction due to the merger of Cingular and AT&T Wireless). There will be no difference in design as the existing and two proposed alternates call for identical 150' monopoles at the same elevation with the same antennas attached.

The sole suggestion of any sort of "need" in the Application and the testimony is the developer's desire to move the tower for some perceived enhancement to the private development of the subject site into a commercial "lifestyle" detail development (Application Page 3). The only public need testified to by the witnesses was the effort to bring the dubious benefits of stores like Banana Republic to the Town of Guilford. ( 3 p.m.Trans. 1/15/08 pg 29.)

In fact even this "private need" does not exist. As the developer's representative testified, in response to questions by Mr. Ashton of the Council, they really did not need to move the existing monopole tower to have their lifestyle center.

MR. GRAFMEYER: I guess I'll try and answer this. I understand where all this line of questioning is going and I guess -- I'm -- I'm sympathetic to it quite honestly, but I think what I'm hearing, in a round-about way, is you're asking -- or a number of you have asked could this center be designed in such a way that some how, some way we could leave that tower where it's at. And anything is possible. The answer is probably yes could you design it in such a way to leave it there. (3 p.m. Trans 1/15/08 pg 76.)

When pressed by Mr. Ashton further and even given a suggestion of how recapture any lost square footage, the answer was the same:

MR. ASHTON: Is there any reason that those stores could not be -- the tower being not moved, those two stores would be extended 30 feet to the southeast, and the store that's marked shopping center operations be foreshortened to accommodate the tower location? It's the same square footage in the center, but the tower location hasn't changed.

MR. GRAFMEYER: Really my answer hasn't changed from just a few minutes ago --

MR. ASHTON: Okay, I --

MR. GRAFMEYER: -- anything is possible, . . .  
(3 p.m. Trans 1/15/08 pg 79.)

The witness went on to say that they simply did not like the aesthetic.

It must also be kept in mind that the subject site was purchased by the developer with the tower in place and no guarantee that it could or would be relocated. And the buildings in this outlet center are "proposed" Nothing prevents the redesign to accommodate the existing tower location in the manner suggested by Mr. Ashton.

The statutory framework for finding of public need and the statutory purpose of the legislation establishing the jurisdiction of the Siting Council speaks to no such private financial or development need. The public need and the statutory purposes are entirely met by the existing facility.



## **2: Tower Utilization:**

Neither the original application nor the supplemental application suggest any differences in tower design, utilization or co-locations. Such utilization in any event has also has nothing to do with location of the tower. Changes in utilization of the tower can be accommodated in the existing location with no need to move the tower anywhere.

In fact, it was indicated that there simply are no other users to go on to the existing or replacement towers.

CHAIRMAN CARUSO: There's nobody else left to put on it?

MS. KOHLER: -- there's really nobody else to put on it at this point.

(Page 58 of 4/1/08 transcript)

Mr. Ashton of the Council inquired (at Page 59 of 4/1/08 transcript) whether there were municipal emergency antennas on the existing structure. The applicant indicated that there were none.

Applicant also attempted to suggest that the existing tower, even though there was no demand for new antennas and indeed, in view of the fact that there would be one fewer array in view of the merger of two carriers, that somehow the existing tower was insubstantial for the present need. There is no such evidence in the applications and no direct testimony on the point. On Page 61 of the April 1 transcript, the applicant, through its witness, Mr. Robertson, even indicated that the subject tower would not actually be scrapped but it would be put back into service at another location. This lends significant question to the statements that suggested there was structural problem with the existing tower. The Application, at Page 9, states that the relocation ". . . will not involve making any changes in the design or co-locations."

Nor is there any evidence before the Council to suggest that rebuilding the tower would somehow enhance the ability to place antennas or arrays on the tower. It has been acknowledged in the application and in testimony that one location would be dropped off due to Cingular/AT&T's merger. There is also a likely prospect of the unification of the Sprint and Nextel locations due to the likely "merger" of the different technologies they had originally been operating. The likely prospect is that two locations will not be necessary for Spring/Nextel (transcript 4/1/08, Page 66 et seq).

The availability of additional location on the towers confirmed the testimony of the applicant's expert (April 1, 2008 transcript Page 68) in which he describes additional location being available on the tower due to the AT&T merger and loss of one tower location. When asked the direct question (at Page 68) whether there had been requests for additional locations, neither the applicant's expert witness nor attorney could respond to the question and in fact, counsel for the applicant stated (at Page 69, Line 7), "There is no witness here that can answer that."

Indeed, the transcript, application and its supplement give no indication of any direct evidence of need for additional antenna locations, need for additional arrays or request for such items from the users of the tower. The applicant, no doubt realizing that it had not defined a statutory cognizable need has attempted to speculate about prospective, potential needs that may arise in the future while offering no evidence of any kind of the reality of that need or likely request for additional tower locations. No public need has been shown.

**B. There is no Precedent for relocation of Facilities for Private Development:**

The applicant has asked the Council to take administrative notice of the staff's report regarding Petition #765 which was a petition to move a tower located at 107 Wilcox Road, Stonington in April, 2006. The applicant will no doubt attempt to argue that Council has approved the relocation of a tower in the past.

Petition #765 has no precedential value in the present context. In the first place, that petition sought a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required. Therefore the certification process was not followed and the burden of proof of a public need was never undertaken.

But a reading of the report shows that there was substantial reasons and needs associated with the relocation of that subject tower. It was an existing lattice tower with a height of 105' which was being changed to a 100' monopole. Together with the monopole, a fenced and landscaped area would be constructed that did not previously exist. The existing tower had been used for "in house" communication purposes by CL&P and Yankee Gas. The tower had been located immediately adjacent to the administrative building for these entities but the property was no longer owned by the utilities. It was specifically found the tower no longer served its former use. It was also found there would be significant improvement in aesthetics of the property and relocating the tower would permit sufficient ground space for multiple carriers to install their equipment. The total height of the new tower with its appurtenances would actually be lower in height than the existing tower. The new tower would be located on an already developed site. The report also determined that of the 1,800 acres of visibility, all but 88 of those acres would be visibility from the waters

of Long Island Sound. The local director of planning also noted that the tower replacement would be an improvement in aesthetics, the tower would enhance communications in the area of Route 1, and the tower would provide an opportunity for co-location. These amount to significant findings of public need and environmental improvement.

There is no basis to make similar substantial findings in the present case. There will be no aesthetic improvement to the relocation of the tower in the present application or its supplement; there will be no improvement to communications; there will be no enhancement to co-location or to the installation of the equipment in the ground level compound. In short, the two circumstances bear no resemblance to one another.

**C. Scenic and Environmental Impacts:**

**1. Original Proposed Relocation:**

As noted above, there are currently three residences within 1,000 feet of the facility, the nearest of which is approximately 438' away. By contrast the original proposed relocation in the current Application proposes to locate the tower within 1,000 feet of 31 residences. (Responses to Interrogatories, dated December 21, 2007, response #5.) The original proposal, therefore, would move the tower from an area along a commercial and industrial strip along Boston Post Road and adjacent to the Town's landfill to a location across the site and as close as possible to the Guilford Land Trust Open Space and to the subdivision occupied by the parties and intervenors herein.

The Application Exhibit C contains an aerial photograph and survey mapping showing the existing cellular tower site and the proposed cellular tower site. The parties and intervenors have filed copies of the Site and Topographical surveys of the subject property

prepared by the developer. ( Parties' Exhibit list # 1-3). As the topographical mapping shows, the original proposed tower compound location will be at the top of a promontory substantially farther southeast than the present location and immediately above a pond and the waterway known as Spinning Mill Brook. Directly across Spinning Mill Brook to the Northeast is an extensive parcel of open space belonging to the Guilford Land Conservation Trust, Inc., an abutting owner to the site (See also Application Exhibit G, List of Abutters). The homes of the parties Arabolos and Rose, are also shown located immediately across the valley created by the watershed of the Spinning Mill Brook. As the balloon flights on January 15, 2008 showed, the original proposed tower location will be directly and substantially in the view of those parties and indeed all parties and intervenors who are adjacent homeowners (see Page 1 of Exhibit C to the Application , aerial photograph). The base elevation of the original proposed relocation, attached, is approximately 100 feet. (Trans. 4/1/08 pg 63) The homes of the parties are at approximately 120 feet, requiring them to look down at the tower base and compound as well as having the tower near by and directly in their view. This location will thrust the tower directly into the visual field of the parties' and intervenors' homes compromising the view and their enjoyment of their properties with no apparent gain in service or the needs of the public.

Being located on the high promontory, as proposed, will also make the tower substantially more visible from the I- 95 and Boston Post Road corridor as the balloon test of the subject site also revealed.

The original proposed relocation will substantially affect the scenic quality of the area. It has been already noted herein above that the eastern boundary of the subject property

is occupied by a pristine watercourse known as the Spinning Mill Brook which runs south and eventually into the Long Island Sound. The brook and its associated wetlands are located in a narrow valley along the easterly boundary of the subject site. The other side of that valley is property owned by the Guilford Land Conservation Trust, Inc. and is preserved for its natural and scenic values. As revealed in the site plan ( Application, Exhibit C, Sheet SC-1; Parties' Exhibit list # 1-3) the subject tower would be located on a promontory at the very edge of the narrow valley that makes up the Spinning Mill Brook's watercourse and substantially closer to the open space property of the Guilford Land Conservation Trust. It would also stand immediately at the lower end of the valley containing the Brook and be visible towering over the area from any location along the brook. It will be fully visible along the entire length of the Spinning Brook Valley floor, along the Land Trust Property and will be a dominating physical feature detracting from the natural scene.

## **2. Alternate Proposed Relocation:**

The applicant filed its supplemental submission dated March 26, 2008 by which it proposed an alternate relocation site moving the telecommunications tower a distance of approximately 150' south and west of the existing location. This would have the effect of moving the tower closer to the Boston Post Road than the existing location.

The alternate location proposed will effect a minimal change in visual or environmental impact upon the parties or intervenors given the short distance of the move and no change in elevation or height, provided no new antenna arrays are installed. Should

the alternate location receive approval, the applicant should be required to camouflage the pole and arrays as a tree.

Without waiving their rights in any manner, the proposed alternate relocation site is preferable to the parties and intervenors.

**V. CONCLUSION:**

The parties and intervenors admitted by the Council in the above captioned proceeding respectfully object to the Application and request that Docket #349, Global Signal Acquisitions II's, Application for Certificate of Environmental Compatibility and Public Need For The Construction, Maintenance and Operation of a Telecommunications Facility at 1919 Boston Post Road, Guilford, Connecticut be denied.

There has been no showing of public need for the relocation of the subject tower nor any showing of environmental compatibility for such a relocation. Approval of the above captioned application would be an impermissible extension of the jurisdiction of the Connecticut Siting Council in that the stated statutory purpose of the Siting Council's jurisdiction does not include the enhancement of private development potential.

Parties: Anthony Poccia, William and Myung Arabolos,  
Margaret Rose, Richard and Sandra Wilson

Intervenors: Heather Fernandes, Diane and Alan  
Sholomskas, Brian Denning, Joel and Donna Zemke,  
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**CERTIFICATION**

This is to certify that the foregoing document is a true copy of the document transmitted to the State of Connecticut Siting Council, and to further certify that a copy of the foregoing has been transmitted by U.S. Mail, postage paid and by facsimile, this 1<sup>st</sup> day of May, 2008 to all counsel of record as follows:

Julie D. Kohler, Esq.  
Cohen and Wolf, PC  
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John S. Bennet  
Commissioner of the Superior Court